

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA

VERSUS

CRIMINAL NO. 1:02cr85WJG-1
CIVIL ACTION NO. 1:09cv804WJG

ULVIN J. CUEVAS, JR.

O R D E R

THIS CAUSE comes before the Court on the motion [126] of the Petitioner, Ulvin J. Cuevas, Jr., for reconsideration of the order dated August 30, 2010, which denied Cuevas' petition for relief under 28 U.S.C. § 2255. (Ct. R., Doc. 124.) Cuevas asserts that the merits of his claims as presented on appeal were never addressed by the Fifth Circuit Court of Appeals [Fifth Circuit] resulting in a manifest factual error which merits reconsideration of the order. (Ct. R., Doc. 126, p. 2.)

On December 5, 2008, the United States filed a motion to dismiss the appeal, or in the alternative for summary affirmance, with the Fifth Circuit. (Ct. R., Doc. 128-1, p. 4.) After briefing was completed, the Fifth Circuit issued an order granting the motion to dismiss the appeal. (*Id.*, p. 5.) The merits of the claims contained in the initial appeal were not addressed by the motion to dismiss. (Ct. R., Doc. 128, p. 3.)

Because the general waiver and waiver in the plea agreement was informed and voluntary, Defendant waived his right to appeal the criminal conviction and sentence. (Ct. R.,

Doc. 59, pp. 7-8; Doc. 100, pp. 8-10, 16, 17-20, 23.) The Fifth Circuit dismissed Cuevas' appeal following the United States' motion to dismiss, which specifically argued that Cuevas had waived his right to an appeal. (Ct. R., Doc. 117, Exh. B, p. 4-10.) The waiver supports the Fifth Circuit's action on the motion to dismiss. *United States v. Melacon*, 972 F.2d 566, 567 (5th Cir. 1992). Accordingly, the Court finds the motion to reconsider is without merit and should be denied. It is, therefore,

ORDERED that Cuevas' motion to reconsider [126] be, and is hereby, denied.

SO ORDERED, this the 13th day of October, 2010.



UNITED STATES SENIOR DISTRICT JUDGE